

SENATE BILL REPORT

SB 5113

As of February 4, 2005

Title: An act relating to allowing the department of ecology to permit by rule certain water storage facilities.

Brief Description: Allowing the department of ecology to permit by rule certain water storage facilities.

Sponsors: Senators Shin, Rockefeller, Kline, Keiser, Rasmussen and Berkey.

Brief History:

Committee Activity: Water, Energy & Environment: 1/26/05.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Staff: Margaret King (786-7416)

Background: Washington's Water Code requires "all waters within the state" and "any right thereto, or to the use thereof, shall be acquired only by appropriation for a beneficial use" pursuant to a permit-based system "and not otherwise." "Beneficial use" includes, but is not limited to, "domestic use, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation" and other uses that do not constitute a waste of water. Additional provisions of the Washington Code establish the Department of Ecology (DOE) as the administrative, enforcement, and planning authority with respect to the water resources of the state. "Water resources" is defined as "all waters above, upon, or beneath the surface of the earth." Accordingly, a state permit or license is required from the DOE before a person may "appropriate" public waters and place that water to "beneficial use"

Over the last several years, issues have increasingly arisen surrounding the promotion and use of cisterns and rain barrels by various cities and counties. The DOE has taken the position that the Water Code does not provide a definitive answer on whether a permit is or is not required for such uses.

Questions have arisen regarding whether the DOE has the authority to allow the use of such water collection devices without a permit for water appropriation as required by the Water Code. Concern has again arisen recently because some counties have denied building permits for residences that include cisterns because of the language contained in the Washington Water Code.

Summary of Substitute Bill: A provision is added to the Water Code that specifically exempts from the Water Code's mandatory permitting process the storage and beneficial use of rain water collected in barrels and cisterns where the water is intended to be put to use on the same property where the rain water is collected. The DOE is required to consult with local building permit agencies to monitor the installation of very large capacity rain water

collection systems for any cumulative effect that the systems may have on ground water recharge rates and potential impacts upon other well users from the same ground water source; however, the DOE is not required to issue a permit for such projects.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is good stewardship to allow this use and this bill is good language and policy. The DOE receives calls weekly regarding requirements for permits for rain barrels and the DOE doesn't require it although law technically says permits are needed. A review of program is suggested after a period of time along with a report back to the Committee. Residential uses vary from a few very small systems of 6,000 to 7,000 gallons to 30,000 gallons. Limiting water to use on property limits the size of cisterns and recharge from cisterns occurs throughout the year. Re-use is a good thing but the bill should be broad enough to allow some commercial and agricultural uses.

Testimony Against: This bill will impact the amount of return flow and permits should be required. There is no way to enforce the consulting provision.

Who Testified: PRO: Senator Shin, prime sponsor; Richard Marin, Nordland, WA; Joe Stohr, DOE, Tim Pope, Northwest Water Source; Mike Broil, Living System Design; Kathleen Collins, Washington Water Policy Alliance.

CON: Dawn Vyvyan, Yakama Nation.